

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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L.Y.,

Plaintiff,

COMPLAINT

-against-

ARCHDIOCESE OF NEW YORK and CHURCH OF OUR LADY OF PITY, Index No. _____

Defendants.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, L.Y., by and through undersigned counsel, respectfully shows to this Court and alleges as follows:

INTRODUCTION

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-g. The Plaintiff, when she was approximately seven (7) years old, was sexually assaulted by Father Arturo “Arthur” Fernando, a Priest and serial pedophile of the Archdiocese of New York.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff L.Y. is a citizen and resident of the State of New York. Plaintiff brings this Complaint using her initials because of the sensitive nature of the allegations of child sexual abuse in the Complaint, which is a matter of the utmost intimacy. Plaintiff fears embarrassment and further psychological damage if her identity as a victim of child sexual abuse were to become publicly known.

2. Defendant, ARCHDIOCESE OF NEW YORK (hereinafter referred to as "ARCHDIOCESE"), is a religious institution and organization with principal offices located at 1011 First Avenue, New York, New York 10022. The ARCHDIOCESE controls all Catholic religious, pastoral and educational functions in the boroughs of Manhattan, the Bronx and Staten Island, and in other counties in the greater New York metropolitan area. The ARCHDIOCESE operates and controls approximately 370 parishes, 274 schools and 90 Catholic charities. The ARCHDIOCESE is a citizen and resident of the State of New York.

3. Defendant, ROMAN CATHOLIC CHURCH OF OUR LADY OF PITY-ST. ANTHONY OF PADUA f/k/a CHURCH OF OUT LADY OF PITY (hereinafter referred to as "Our Lady of Pity") is a Roman Catholic parish church under the authority of the Roman Catholic Archdiocese of New York, with a principal place of business located at 1616 Richmond Avenue, Staten Island. OUR LADY OF PITY is a citizen and resident of the State of New York.

4. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

5. Personal jurisdiction lies over Defendants as they are present and domiciled in the State of New York.

6. Venue of this action lies in New York County and a substantial part of the events or omissions giving rise to the claim occurred in New York County or one of the Defendants resides in New York County.

BACKGROUND AND SEXUAL ASSAULT OF THE PLAINTIFF

7. Plaintiff was raised in a devout Catholic family who were parishioners of OUR LADY OF PITY. Plaintiff and her family attended mass regularly and were involved in activities at the Church.

8. Father Arturo "Arthur" Fernando (hereinafter referred hereto as "Father Fernando") was assigned to the ARCHDIOCESE from 1970-1973. Father Fernando's assignment to the ARCHDIOCESE involved serving as an associate priest at OUR LADY OF PITY.

9. Plaintiff was sexually and physically abused and assaulted by Father Fernando on several occasions when she was approximately seven (7) years old.

10. The acts of sexual abuse and assault committed by Father Fernando included forced kissing, touching of Plaintiff's vagina and touching of Plaintiff's buttocks.

11. The acts of sexual abuse committed by Father Fernando occurred on the premises of OUR LADY OF PITY. Father Fernando often wore his priest garb when he was sexually abusing and assaulting Plaintiff.

12. Father Fernando was abruptly and silently removed from his position at OUR LADY OF PITY and transferred outside of the ARCHDIOCES.

NOTICE - Father Fernando's History of Sexual Abuse

13. At all times relevant and material hereto, Father Fernando was assigned to the ARCHDIOCESE and OUR LADY OF PITY.

14. At all times relevant and material hereto, Father Fernando sexually abused children from throughout his tenure at the ARCHDIOCESE and OUR LADY OF PITY.

15. Upon information and belief, several parishioners of OUR LADY OF PITY expressed concern that Father Fernando was unusually affectionate with child parishioners.

16. Upon information and belief, several parishioners of OUR LADY OF PITY met with Monsignor Anthony Ricotti and/or other church officials to express their concerns regarding Father Fernando and his interactions with children.

17. Upon information and belief, shortly after receiving complaints from parishioners regarding Father Fernando's interactions with children, Father Fernando was abruptly and silently removed from his position at OUR LADY OF PITY and transferred outside of the ARCHDIOCES.

18. Upon information and belief, Father Fernando was transferred or otherwise reassigned to the Archdiocese of Los Angeles and the Diocese of Orange.

19. Upon information and belief, during his tenure with the Archdiocese of Los Angeles and the Diocese of Orange, at least one individual reported sexual abuse by Father Fernando.

20. At all times relevant and material hereto, Defendants knew or in the exercise of reasonable care should have known that Father Fernando had a propensity for the conduct which caused injury to Plaintiff, particularly he had a propensity to engage in the sexual abuse of children.

21. At all times relevant and material hereto, it was reasonably foreseeable to Defendants that Father Fernando would commit acts of child sexual abuse or assault of children.

22. At all times relevant and material hereto, Defendants knew or should have known that Father Fernando was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his ministry, counsel, care and/or protection.

23. With such actual or constructive knowledge, Defendants' acts and omissions provided Father Fernando with the opportunity to commit foreseeable acts of child sexual abuse or assault on Plaintiff.

NOTICE – Concealment of Acts of Sexual Assault by Priests

24. The Cardinal of the Archdiocese at all relevant times knew that Priests of the Archdiocese, under his supervision and control, were grooming and sexually molesting children with whom the Priests would have contact in their ministry and pastoral functions. At all relevant

times, the Cardinal knew that this was a widespread, ubiquitous and systemic problem in the Archdiocese, involving many Priests and numerous victims.

25. Despite receiving credible allegations of child sexual abuse against Priests, the Defendants acted to conceal these allegations in an effort to avoid scandal and accountability.

26. This concealment was in accordance with a policy of the Archdiocese, as agent, and the Holy See, as principal. In 1922, the Holy See released a confidential document to its Bishops and other officials of Catholic organizations regarding the handling of cases of solicitation of sex in the confessional. This document mandated a specific procedure for Holy See's agents, including the Defendants, to use when a cleric abused children using the confessional. This document required strict secrecy. The 1922 document showed that the Holy See and its agents were fully aware that there was a systemic problem of clergy sexually molesting children using the confessional.

27. In 1962, the Holy See released the confidential document, *Instruction on The Manner of Proceeding in Cases of Solicitation* (The Vatican Press, 1962) (hereinafter referred to as "*Crimen Sollicitationis*"). The heading of the document states, "From the Supreme and Holy Congregation of the Holy Office To All Patriarchs, Archbishops, Bishops and Other Diocesan Ordinaries 'Even of the Oriental Rite,'" and contains specific instructions regarding the handling of child sex abuse by clergy. According to the document itself, it is an "instruction, ordering upon those to whom it pertains to keep and observe it in the minutest detail." *Crimen Sollicitationis* at paragraph 24.

28. The 1962 document reinforced that the Holy See and its agents to whom the documents was directed had knowledge that there was a systemic problem of Catholic clergy sexually molesting children using the confessional.

29. At the same time, the Holy See was involved in the formation of secret facilities in the United States where sexually offending clergy would be sent for short periods of time. In 1962-63, Fr. Gerald Fitzgerald reported to the Pope on the problem of abuse of children by clergy and expressed concerns if these priests were returned to active duty.

30. Fr. Fitzgerald's reports were kept secret under the Holy See's standing policy to avoid scandal at all costs. Its recommendation was ignored, however, and instead the Holy See made a choice to return known offending priests to active duty. At this point, it is clear that the Holy See and its agents, including the Defendants, knew they had a widespread problem of clergy sexually molesting minors, and they participated in the creation and the operation of facilities in the United States where sexually offending clergy could be sent before they were moved to another parish to work and potentially abuse again.

31. The Holy See's policy of secrecy under penalty of immediate removal from the organization (excommunication) for all involved in an accusation of child sexual abuse created a shroud of secrecy insulating Priests from consequence. Through this policy and others, the Holy See and its agents, including the Defendants knowingly allowed, permitted and encouraged child sex abuse by the Defendants' Priests.

32. The Holy See mandates secrecy for all those involved, including agents and itself, in handling allegations of sexual abuse. Penalties for child sexual abuse include an order to move offending priests to other locations once they have been determined to be "delinquent." In response to allegations, the document mandates that supplementary penalties include: "As often as, in the prudent judgment of the Ordinary, it seems necessary for the amendment of the delinquent, for the removal of the near occasion [of soliciting in the future], or for the prevention of scandal or reparation for it, there should be added a prescription for a prohibition of remaining

in a certain place.” *Crimen Sollicitations* at paragraph 64. Under this policy of secrecy and transfers or reassignments, all involved are threatened with excommunication and, thus, damnation, if they do not comply.

33. The policy of secrecy and the severest of penalties for its violation were reiterated in documents issued by officials of the Holy See for the benefit of its agents, including Defendants, in 1988 and 2001.

34. The policies and practices of the Defendants designed to conceal sexual abuse by clergy and protect it from scandal and liability included the following:

- (a) transfer and reassignment of clergy known or suspected to abuse minors to deflect attention from reports or allegations of child sexual abuse;
- (b) concealing from parishioners and even other clergy that a priest reassigned to their parish posed a danger of sexual abuse to children;
- (c) failing to alert parishioners from the Priest’s prior assignments that their children were exposed to a known or suspected child molester;
- (d) failing to report sexual abuse to criminal authorities; and
- (e) otherwise protecting and fostering the interests of abusive clergy to the detriment of the victims and the community, for the purpose of avoiding scandal and public scrutiny.

35. Upon information and belief, the Archdiocese’s transfers and reassignments of Father Fernando were pursuant to this policy and practice designed to conceal sexual abuse of clergy and protect the Defendants from scandal.

36. Indeed, the policy of secrecy and lack of consequences for the sexual abuse of children was perceived as a perquisite by clergy sex abusers. The Holy See and Defendants

believed it to be perceived as a perquisite, which they condoned and used to their advantage in controlling Priests.

37. Plaintiff was in a zone of foreseeable harm as a child engaged in Catholic activities in close proximity to or with Catholic clergy.

38. The Defendants were in the best position to protect against the risk of harm as it knew of the systemic problem and foreseeable proclivities of its Priests to sexually abuse children.

39. At all times relevant and material hereto, while the Defendants had special and unique knowledge of the risk of child sexual abuse by its Priests, such Priests who would prey on children were outside the reasonable contemplation of the Catholic community and families who trusted Priests to have access to their children.

40. Plaintiff, who was approximately seven years old when the sexual abuse began, had no opportunity to protect herself against a danger that was solely within the knowledge of the Defendants.

41. Defendants knew a significant percentage of priests were using their status and position to identify, recruit, groom and sexually assault vulnerable children in the Church.

42. All children engaging in Catholic activities within the Archdiocese were in this manner placed at risk of child sexual abuse.

DUTY

43. At all times relevant and material hereto, defendant ARCHDIOCESE, as principal, and defendant OUR LADY OF PITY, as agent, were in an agency relationship, such that OUR LADY OF PITY acted on the ARCHDIOCESE's behalf, in accordance with the ARCHDIOCESE's instructions and directions on all matters, including those relating to the hiring of priests and clergy. The acts and omissions of OUR LADY OF PITY were subject to the

ARCHDIOCESE's plenary control, and OUR LADY OF PITY consented to act subject to the ARCHDIOCESE's control.

44. At all times relevant and material hereto, defendant ARCHDIOCESE and Plaintiff were in a special relationship of church-parishioner, in which the ARCHDIOCESE owed Plaintiff a duty of reasonable care to prevent foreseeable harm.

45. At all times relevant and material hereto, defendant ARCHDIOCESE and Father Fernando were in a special relationship of employer – employee, in which the ARCHDIOCESE owed a duty to control the acts and conduct of Father Fernando to prevent foreseeable harm.

46. At all times relevant and material hereto, defendant ARCHDIOCESE owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of Plaintiff while she was under the care, custody or in the presence of the ARCHDIOCESE. The ARCHDIOCESE's duties encompassed using reasonable care in the retention, supervision and hiring of Father Fernando and the duty to otherwise provide a safe environment for Plaintiff.

47. At all times relevant and material hereto, defendant OUR LADY OF PITY and Plaintiff were in a special relationship of church – parishioner, in which OUR LADY OF PITY owed Plaintiff a duty of reasonable care to protect her from foreseeable harm.

48. At all times relevant and material hereto, defendant OUR LADY OF PITY and Father Fernando were in a special relationship of employer-employee, in which OUR LADY OF PITY owed a duty to control the acts and conduct of Father Fernando to prevent foreseeable harm.

49. Defendant OUR LADY OF PITY owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of Plaintiff while she was under the care, custody or in the presence of OUR LADY OF PITY. OUR LADY OF PITY's duties encompassed using reasonable care in the retention, supervision and hiring of Father Fernando and the duty to

otherwise provide a safe environment for Plaintiff.

50. Defendant OUR LADY OF PITY had a duty to exercise reasonable care in the training of clergy, priests, administration and staff in the prevention of sexual abuse and protection of the safety of children and parishioners in its care.

51. Defendant OUR LADY OF PITY had a duty to establish and implement policies and procedures in the exercise of reasonable care for the prevention of sexual abuse and protection of the safety of the children and parishioners in its care.

BREACH

52. Defendants breached their duties by (i) hiring Father Fernando as a priest when they knew or should have known of his sexual proclivities for children; (ii) at all relevant times, retaining and failing to adequately supervise Father Fernando as an active priest of the Archdiocese; and (iii) granting and maintaining Father Fernando faculties as priest without making any warning or notice of his perverse sexual proclivities to the Catholic faithful who would have contacts with Father Fernando.

53. At all times relevant and material hereto, the Defendants had inadequate policies and procedures to protect children who would encounter their Catholic priests and clergy in the course of their duties.

54. The Defendants concealed their knowledge that priests were unsafe and failed to adopt policies and procedures that would protect children and reduce the risk of child sexual abuse by its Priests.

55. The Defendants failed to warn Catholic families that their children were at risk of sexual abuse by Priests.

Nature of Conduct Alleged

56. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of the New York Penal Law, including without limitation, conduct constituting sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

57. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendant acted with reckless disregard for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Father Fernando to retain Father Fernando in ministry with unfettered access to children.

COUNT I - NEGLIGENCE
(Against Defendant ARCHDIOCESE)

58. Plaintiff, L.Y., repeats and realleges Paragraphs 1 through 57 above.

59. As a direct and proximate result of the Defendant's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

60. The Defendant's acts and conduct shows a reckless or willful disregard for the safety and well-being of L.Y. and other children.

COUNT II - NEGLIGENCE
(Against Defendant OUR LADY OF PITY)

61. Plaintiff, L.Y., repeats and realleges Paragraphs 1 through 57 above.

62. As a direct and proximate result of the Defendant's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

63. The Defendant's acts and conduct shows a reckless or willful disregard for the safety and well-being of L.Y. and other children.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action.

Dated: New York, New York
November 7, 2019

Respectfully submitted,

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By: _____

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